

AMENDED IN ASSEMBLY APRIL 9, 2014
AMENDED IN ASSEMBLY MARCH 26, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2096

Introduced by Assembly Member Muratsuchi

February 20, 2014

An act to amend ~~Section 25102~~ *Sections 25112 and 25503* of the Corporations Code, relating to securities transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2096, as amended, Muratsuchi. Securities transactions: ~~qualification requirements; exemptions.~~ *requirements; notification.*

Existing law, the Corporate Securities Law of 1968, requires certain securities offered or sold in this state to be qualified through application filed with the Commissioner of Business Oversight, or to be exempt from the qualification requirements. ~~Existing law exempts offers and sales of securities in specified transactions including, but not limited to, offers made to no more than 35 persons, excluding accredited investors, as defined by reference to Regulation D promulgated under the federal Securities Act of 1933, as amended, to include specified minimum net worth and income requirements for prospective investors. Under existing law, a security issued either by the issuer of a security registered under a designated provision of the federal law or issued by an investment company registered under other specified federal law, and which is not eligible for qualification under existing law, may be qualified by notification by making a specified application, and providing certain documents and additional information.~~

Existing law imposes liability for specified damages on a person who offers or sells a security if the sale is not qualified, violates a condition of qualification under the act, or violates an order suspending trading issued by the commissioner.

This bill, in addition, would exempt from qualification an offering or sale of securities using a general solicitation or general advertising, provided the transaction meets specified requirements, including a requirement that the aggregate offering price of securities, as defined by reference to Regulation D, does not exceed \$1,000,000, less the aggregate offering price for all securities sold within 12 months, as specified: authorize qualification by notification for any offer or sale of a security, if, among other requirements, the offering meets the requirements for a federal exemption for limited offerings and sales of securities not exceeding \$1,000,000, and the aggregate amount of securities sold to any investor by the issuer does not exceed certain amounts within a 12-month time period, except as specified.

This bill would require a court to award attorney's fees and costs to a prevailing purchaser in an action brought against a person who makes a sale in violation of the qualification provisions prescribed in the bill, and would authorize the court to award treble or punitive damages.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25112 of the Corporations Code is
2 amended to read:
3 25112. (a) (1) Any security issued by a person which is the
4 issuer of any security registered under Section 12 of the Securities
5 Exchange Act of 1934 or issued, by an investment company
6 registered under the Investment Company Act of 1940, and which
7 is not eligible for qualification under Section 25111, may be
8 qualified by notification under this section.
9 (2) Any offer or sale of any security that meets all of the
10 following criteria may be qualified by notification under this
11 section:
12 (A) The aggregate amount of securities sold to all investors by
13 the issuer within any 12-month period is not more than one million
14 dollars (\$1,000,000).

1 (B) *The aggregate amount of securities sold to any investor by*
2 *the issuer, including any amount sold during the 12-month period*
3 *preceding the date of the transaction, does not exceed five thousand*
4 *dollars (\$5,000), or a greater amount as the commissioner may*
5 *provide by rule or order, unless the investor is an accredited*
6 *investor as defined in Section 230.501 of Title 17 of the Code of*
7 *Federal Regulations.*

8 (C) *The offering meets the requirements of the federal exemption*
9 *for limited offerings and sales of securities not exceeding one*
10 *million dollars (\$1,000,000) in Section 230.504 of Title 17 of the*
11 *Code of Federal Regulations.*

12 (D) *The issuer files with the administrator, provides to investors,*
13 *and makes available to potential investors the following:*

14 (i) *A Small Company Offering Registration disclosure document*
15 *on Form U-7, as adopted by the North American Securities*
16 *Administrators Association, prior to the commencement of the*
17 *offering of securities.*

18 (ii) *For offerings that, together with all other offerings of the*
19 *issuer within the preceding 12-month period, have, in the*
20 *aggregate, offering amounts of one hundred thousand dollars*
21 *(\$100,000) or less, the following:*

22 (I) *The income tax returns filed by the issuer for the most*
23 *recently completed year, if any.*

24 (II) *The financial statements of the issuer certified by the*
25 *principal executive officer of the issuer to be true and complete in*
26 *all material respects.*

27 (iii) *For offerings that, together with all other offerings of the*
28 *issuer within the preceding 12-month period, have, in the*
29 *aggregate, offering amounts of more than one hundred thousand*
30 *dollars (\$100,000), but not more than five hundred thousand*
31 *dollars (\$500,000), all financial statements reviewed by a public*
32 *accountant who is independent of the issuer, using professional*
33 *standards and procedures for the review or standards and*
34 *procedures established by the commissioner by rule.*

35 (iv) *For offerings that, together with all other offerings of the*
36 *issuer within the preceding 12-month period, have, in the*
37 *aggregate, offering amounts of more than five hundred thousand*
38 *dollars (\$500,000), audited financial statements.*

39 (E) *The issuer sets aside in a separate bank account all funds*
40 *raised as part of the offering to be held until the time that the*

1 minimum offering amount is reached. If the minimum offering
2 amount is not reached within one year of the effective date of the
3 offering, the issuer shall return all funds to investors.

4 (F) The issuer, a predecessor of the issuer, an affiliated issuer,
5 a director, executive officer, or other officer participating in the
6 offering, a general partner or managing member of the issuer, a
7 beneficial owner of 20 percent or more of the issuer's outstanding
8 voting equity securities, calculated on the basis of voting power,
9 a promoter connected with the issuer in any capacity at the time
10 of the sale, an investment manager of an issuer that is a pooled
11 investment fund, a person that has been or will be paid, directly
12 or indirectly, remuneration for solicitation of purchasers in
13 connection with the sale of securities, a general partner or
14 managing member of the investment manager or solicitor, or any
15 director, executive officer, or other officer participating in the
16 offering of the investment manager or solicitor or general partner
17 or managing member of the investment manager or solicitor would
18 not be disqualified as a "bad actor" under subdivision (d) of
19 Section 230.506 of Title 17 of the Code of Federal Regulations.

20 (G) Any other requirement set forth by rule adopted by the
21 commissioner.

22 (b) An application for qualification under this section shall
23 contain such information and be accompanied by such documents
24 as shall be required by rule of the commissioner, in addition to the
25 information specified in Section 25160 and the consent to service
26 of process required by Section 25165. For this purpose, the
27 commissioner may classify issuers and types of securities.

28 (c) If no stop order or order under subdivision (a) of Section
29 25143 is in effect under this law, qualification of the sale of the
30 securities under this section automatically becomes effective (and
31 the securities may be offered and sold in accordance with the terms
32 of the application as amended) at 12 o'clock noon California time
33 of the 10th business day after the filing of the application or the
34 last amendment thereto or at such earlier time as the commissioner
35 determines.

36 SEC. 2. Section 25503 of the Corporations Code is amended
37 to read:

38 25503. (a) Any person who violates Section 25110, 25130 or
39 25133, or a condition of qualification under Chapter 2
40 (commencing with Section 25110) of this part, imposed pursuant

to Section 25141, or an order suspending trading issued pursuant to Section 25219, shall be liable to any person acquiring from him the security sold in violation of ~~such~~ *that* section, who may sue to recover the consideration he paid for such security with interest thereon at the legal rate, less the amount of any income received therefrom, upon the tender of ~~such~~ *the* security, or for damages, if he no longer owns the security, or if the consideration given for the security is not capable of being returned. Damages, if the plaintiff no longer owns the security, shall be equal to the difference between ~~(a) his~~ *the plaintiff's* purchase price plus interest at the legal rate from the date of purchase and ~~(b) the~~ value of the security at the time it was disposed of by the plaintiff plus the amount of any income received therefrom by the plaintiff.

~~Damages, if~~

(b) If the consideration given for the security is not capable of being returned, damages shall be equal to the value of that consideration plus interest at the legal rate from the date of purchase, provided the security is tendered; and if the plaintiff no longer owns the security, damages in such case shall be equal to the difference between (a) the value of the consideration given for the security plus interest at the legal rate from the date of purchase and (b) the value of the security at the time it was disposed of by the plaintiff plus the amount of any income received therefrom by the plaintiff. ~~Any~~ A person who violates Section 25120 or a condition of qualification under Chapter 3 (commencing with Section 25120) of this part imposed pursuant to Section 25141, shall be liable to any person acquiring from him the security sold in violation of ~~such~~ *that* section who may sue to recover the difference between ~~(a) the~~ value of the consideration received by the seller and ~~(b) the~~ value of the security at the time it was received by the buyer, with interest thereon at the legal rate from the date of purchase. ~~Any~~ A person on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this ~~section, but~~ *section*. *However, in no event shall any underwriter (unless such an underwriter be liable, unless the underwriter shall have knowingly received from the issuer for acting as an underwriter some benefit, directly or indirectly, in which all other underwriters similarly situated did not share in proportion to their respective interest in the underwriting) be liable*

1 *underwriting*, in any suit or suits authorized under this section, for
2 damages in excess of the total price at which the securities
3 underwritten by ~~him~~ *the underwriter* and distributed to the public
4 were offered to the public. ~~Any~~ *A* tender specified in this section
5 may be made at any time before entry of judgment. ~~No~~ *A* person
6 shall *not* be liable under this section for violation of Section 25110,
7 25120 or 25130 if the sale of the security is qualified prior to the
8 payment or receipt of any part of the consideration for the security
9 sold, even though an offer to sell or a contract of sale may have
10 been made or entered into without qualification.

11 *(c) The court shall award attorney's fees and costs to a*
12 *prevailing purchaser in an action brought against any person who*
13 *violates Section 25110 for failure to comply with paragraph (2)*
14 *of subdivision (a) of Section 25112, and may award treble or*
15 *punitive damages.*

16 ~~SECTION 1. Section 25102 of the Corporations Code is~~
17 ~~amended to read:~~

18 ~~25102. The following transactions are exempted from the~~
19 ~~provisions of Section 25110:~~

20 ~~(a) Any offer (but not a sale) not involving any public offering~~
21 ~~and the execution and delivery of any agreement for the sale of~~
22 ~~securities pursuant to the offer if (1) the agreement contains~~
23 ~~substantially the following provision: "The sale of the securities~~
24 ~~that are the subject of this agreement has not been qualified with~~
25 ~~the Commissioner of Corporations of the State of California and~~
26 ~~the issuance of the securities or the payment or receipt of any part~~
27 ~~of the consideration therefor prior to the qualification is unlawful;~~
28 ~~unless the sale of securities is exempt from the qualification by~~
29 ~~Section 25100, 25102, or 25105 of the California Corporations~~
30 ~~Code. The rights of all parties to this agreement are expressly~~
31 ~~conditioned upon the qualification being obtained, unless the sale~~
32 ~~is so exempt"; and (2) no part of the purchase price is paid or~~
33 ~~received and none of the securities are issued until the sale of the~~
34 ~~securities is qualified under this law unless the sale of securities~~
35 ~~is exempt from the qualification by this section, Section 25100,~~
36 ~~or 25105.~~

37 ~~(b) Any offer (but not a sale) of a security for which a~~
38 ~~registration statement has been filed under the Securities Act of~~
39 ~~1933 but has not yet become effective, or for which an offering~~
40 ~~statement under Regulation A has been filed but has not yet been~~

1 qualified, if no stop order or refusal order is in effect and no public
2 proceeding or examination looking toward an order is pending
3 under Section 8 of the act and no order under Section 25140 or
4 subdivision (a) of Section 25143 is in effect under this law.

5 ~~(e) Any offer (but not a sale) and the execution and delivery of~~
6 ~~any agreement for the sale of securities pursuant to the offer as~~
7 ~~may be permitted by the commissioner upon application. Any~~
8 ~~negotiating permit under this subdivision shall be conditioned to~~
9 ~~the effect that none of the securities may be issued and none of~~
10 ~~the consideration therefor may be received or accepted until the~~
11 ~~sale of the securities is qualified under this law.~~

12 ~~(d) Any transaction or agreement between the issuer and an~~
13 ~~underwriter or among underwriters if the sale of the securities is~~
14 ~~qualified, or exempt from qualification, at the time of distribution~~
15 ~~thereof in this state, if any.~~

16 ~~(e) Any offer or sale of any evidence of indebtedness, whether~~
17 ~~secured or unsecured, and any guarantee thereof, in a transaction~~
18 ~~not involving any public offering.~~

19 ~~(f) Any offer or sale of any security in a transaction (other than~~
20 ~~an offer or sale to a pension or profit-sharing trust of the issuer)~~
21 ~~that meets each of the following criteria:~~

22 ~~(1) Sales of the security are not made to more than 35 persons,~~
23 ~~including persons not in this state.~~

24 ~~(2) All purchasers either have a preexisting personal or business~~
25 ~~relationship with the offeror or any of its partners, officers,~~
26 ~~directors or controlling persons, or managers (as appointed or~~
27 ~~elected by the members) if the offeror is a limited liability~~
28 ~~company, or by reason of their business or financial experience or~~
29 ~~the business or financial experience of their professional advisers~~
30 ~~who are unaffiliated with and who are not compensated by the~~
31 ~~issuer or any affiliate or selling agent of the issuer, directly or~~
32 ~~indirectly, could be reasonably assumed to have the capacity to~~
33 ~~protect their own interests in connection with the transaction.~~

34 ~~(3) Each purchaser represents that the purchaser is purchasing~~
35 ~~for the purchaser's own account (or a trust account if the purchaser~~
36 ~~is a trustee) and not with a view to or for sale in connection with~~
37 ~~any distribution of the security.~~

38 ~~(4) The offer and sale of the security is not accomplished by~~
39 ~~the publication of any advertisement. The number of purchasers~~
40 ~~referred to above is exclusive of any described in subdivision (i),~~

1 any officer, director, or affiliate of the issuer, or manager (as
2 appointed or elected by the members) if the issuer is a limited
3 liability company, and any other purchaser who the commissioner
4 designates by rule. For purposes of this section, a husband and
5 wife (together with any custodian or trustee acting for the account
6 of their minor children) are counted as one person and a
7 partnership, corporation, or other organization that was not
8 specifically formed for the purpose of purchasing the security
9 offered in reliance upon this exemption, is counted as one person.
10 The commissioner shall by rule require the issuer to file a notice
11 of transactions under this subdivision.

12 The failure to file the notice or the failure to file the notice within
13 the time specified by the rule of the commissioner shall not affect
14 the availability of this exemption. Any issuer that fails to file the
15 notice as provided by rule of the commissioner shall, within 15
16 business days after discovery of the failure to file the notice or
17 after demand by the commissioner, whichever occurs first, file the
18 notice and pay to the commissioner a fee equal to the fee payable
19 had the transaction been qualified under Section 25110. Neither
20 the filing of the notice nor the failure by the commissioner to
21 comment thereon precludes the commissioner from taking any
22 action that the commissioner deems necessary or appropriate under
23 this division with respect to the offer and sale of the securities.

24 (g) Any offer or sale of conditional sale agreements, equipment
25 trust certificates, or certificates of interest or participation therein
26 or partial assignments thereof, covering the purchase of railroad
27 rolling stock or equipment or the purchase of motor vehicles,
28 aircraft, or parts thereof, in a transaction not involving any public
29 offering.

30 (h) Any offer or sale of voting common stock by a corporation
31 incorporated in any state if, immediately after the proposed sale
32 and issuance, there will be only one class of stock of the
33 corporation outstanding that is owned beneficially by no more than
34 35 persons, provided all of the following requirements have been
35 met:

36 (1) The offer and sale of the stock is not accompanied by the
37 publication of any advertisement, and no selling expenses have
38 been given, paid, or incurred in connection therewith.

39 (2) The consideration to be received by the issuer for the stock
40 to be issued consists of any of the following:

1 ~~(A) Only assets (which may include cash) of an existing business~~
2 ~~enterprise transferred to the issuer upon its initial organization, of~~
3 ~~which all of the persons who are to receive the stock to be issued~~
4 ~~pursuant to this exemption were owners during, and the enterprise~~
5 ~~was operated for, a period of not less than one year immediately~~
6 ~~preceeding the proposed issuance, and the ownership of the~~
7 ~~enterprise immediately prior to the proposed issuance was in the~~
8 ~~same proportions as the shares of stock are to be issued.~~

9 ~~(B) Only cash or cancellation of indebtedness for money~~
10 ~~borrowed, or both, upon the initial organization of the issuer,~~
11 ~~provided all of the stock is issued for the same price per share.~~

12 ~~(C) Only cash, provided the sale is approved in writing by each~~
13 ~~of the existing shareholders and the purchaser or purchasers are~~
14 ~~existing shareholders.~~

15 ~~(D) In a case where after the proposed issuance there will be~~
16 ~~only one owner of the stock of the issuer, only any legal~~
17 ~~consideration.~~

18 ~~(3) No promotional consideration has been given, paid, or~~
19 ~~incurred in connection with the issuance. Promotional consideration~~
20 ~~means any consideration paid directly or indirectly to a person~~
21 ~~who, acting alone or in conjunction with one or more other persons,~~
22 ~~takes the initiative in founding and organizing the business or~~
23 ~~enterprise of an issuer for services rendered in connection with the~~
24 ~~founding or organizing.~~

25 ~~(4) A notice in a form prescribed by rule of the commissioner,~~
26 ~~signed by an active member of the State Bar of California, is filed~~
27 ~~with or mailed for filing to the commissioner not later than 10~~
28 ~~business days after receipt of consideration for the securities by~~
29 ~~the issuer. That notice shall contain an opinion of the member of~~
30 ~~the State Bar of California that the exemption provided by this~~
31 ~~subdivision is available for the offer and sale of the securities. The~~
32 ~~failure to file the notice as required by this subdivision and the~~
33 ~~rules of the commissioner shall not affect the availability of this~~
34 ~~exemption. An issuer who fails to file the notice within the time~~
35 ~~specified by this subdivision shall, within 15 business days after~~
36 ~~discovery of the failure to file the notice or after demand by the~~
37 ~~commissioner, whichever occurs first, file the notice and pay to~~
38 ~~the commissioner a fee equal to the fee payable had the transaction~~
39 ~~been qualified under Section 25110. The notice, except when filed~~
40 ~~on behalf of a California corporation, shall be accompanied by an~~

1 irrevocable consent, in the form that the commissioner by rule
2 prescribes, appointing the commissioner or his or her successor in
3 office to be the issuer's attorney to receive service of any lawful
4 process in any noncriminal suit, action, or proceeding against it
5 or its successor that arises under this law or any rule or order
6 hereunder after the consent has been filed, with the same force and
7 validity as if served personally on the issuer. An issuer on whose
8 behalf a consent has been filed in connection with a previous
9 qualification or exemption from qualification under this law (or
10 application for a permit under any prior law if the application or
11 notice under this law states that the consent is still effective) need
12 not file another. Service may be made by leaving a copy of the
13 process in the office of the commissioner, but it is not effective
14 unless (A) the plaintiff, who may be the commissioner in a suit,
15 action, or proceeding instituted by him or her, forthwith sends
16 notice of the service and a copy of the process by registered or
17 certified mail to the defendant or respondent at its last address on
18 file with the commissioner, and (B) the plaintiff's affidavit of
19 compliance with this section is filed in the case on or before the
20 return day of the process, if any, or within the further time as the
21 court allows.

22 (5) Each purchaser represents that the purchaser is purchasing
23 for the purchaser's own account, or a trust account if the purchaser
24 is a trustee, and not with a view to or for sale in connection with
25 any distribution of the stock.

26 For the purposes of this subdivision, all securities held by a
27 husband and wife, whether or not jointly, shall be considered to
28 be owned by one person, and all securities held by a corporation
29 that has issued stock pursuant to this exemption shall be considered
30 to be held by the shareholders to whom it has issued the stock.

31 All stock issued by a corporation pursuant to this subdivision as
32 it existed prior to the effective date of the amendments to this
33 section made during the 1996 portion of the 1995-96 Regular
34 Session that required the issuer to have stamped or printed
35 prominently on the face of the stock certificate a legend in a form
36 prescribed by rule of the commissioner restricting transfer of the
37 stock in a manner provided for by that rule shall not be subject to
38 the transfer restriction legend requirement and, by operation of
39 law, the corporation is authorized to remove that transfer restriction
40 legend from the certificates of those shares of stock issued by the

1 corporation pursuant to this subdivision as it existed prior to the
2 effective date of the amendments to this section made during the
3 1996 portion of the 1995-96 Regular Session.

4 (i) Any offer or sale (1) to a bank, savings and loan association,
5 trust company, insurance company, investment company registered
6 under the Investment Company Act of 1940, pension or
7 profit-sharing trust (other than a pension or profit-sharing trust of
8 the issuer, a self-employed individual retirement plan, or individual
9 retirement account), or other institutional investor or governmental
10 agency or instrumentality that the commissioner may designate
11 by rule, whether the purchaser is acting for itself or as trustee, or
12 (2) to any corporation with outstanding securities registered under
13 Section 12 of the Securities Exchange Act of 1934 or any wholly
14 owned subsidiary of the corporation that after the offer and sale
15 will own directly or indirectly 100 percent of the outstanding
16 capital stock of the issuer, provided the purchaser represents that
17 it is purchasing for its own account (or for the trust account) for
18 investment and not with a view to or for sale in connection with
19 any distribution of the security.

20 (j) Any offer or sale of any certificate of interest or participation
21 in an oil or gas title or lease (including subsurface gas storage and
22 payments out of production) if either of the following apply:

23 (1) All of the purchasers meet one of the following requirements:

24 (A) Are and have been during the preceding two years engaged
25 primarily in the business of drilling for, producing, or refining oil
26 or gas (or whose corporate predecessor, in the case of a corporation,
27 has been so engaged).

28 (B) Are persons described in paragraph (1) of subdivision (i).

29 (C) Have been found by the commissioner upon written
30 application to be substantially engaged in the business of drilling
31 for, producing, or refining oil or gas so as not to require the
32 protection provided by this law (which finding shall be effective
33 until rescinded).

34 (2) The security is concurrently hypothecated to a bank in the
35 ordinary course of business to secure a loan made by the bank,
36 provided that each purchaser represents that it is purchasing for
37 its own account for investment and not with a view to or for sale
38 in connection with any distribution of the security.

39 (k) Any offer or sale of any security under, or pursuant to, a
40 plan of reorganization under Chapter 11 of the federal bankruptcy

1 law that has been confirmed or is subject to confirmation by the
2 decree or order of a court of competent jurisdiction:

3 (l) ~~Any offer or sale of an option, warrant, put, call, or straddle,~~
4 ~~and any guarantee of any of these securities, by a person who is~~
5 ~~not the issuer of the security subject to the right, if the transaction,~~
6 ~~had it involved an offer or sale of the security subject to the right~~
7 ~~by the person, would not have violated Section 25110 or 25130.~~

8 (m) ~~Any offer or sale of a stock to a pension, profit-sharing,~~
9 ~~stock bonus, or employee stock ownership plan, provided that (1)~~
10 ~~the plan meets the requirements for qualification under Section~~
11 ~~401 of the Internal Revenue Code, and (2) the employees are not~~
12 ~~required or permitted individually to make any contributions to~~
13 ~~the plan. The exemption provided by this subdivision shall not be~~
14 ~~affected by whether the stock is contributed to the plan, purchased~~
15 ~~from the issuer with contributions by the issuer or an affiliate of~~
16 ~~the issuer, or purchased from the issuer with funds borrowed from~~
17 ~~the issuer, an affiliate of the issuer, or any other lender.~~

18 (n) ~~Any offer or sale of any security in a transaction, other than~~
19 ~~an offer or sale of a security in a rollup transaction, that meets all~~
20 ~~of the following criteria:~~

21 (1) ~~The issuer is (A) a California corporation or foreign~~
22 ~~corporation that, at the time of the filing of the notice required~~
23 ~~under this subdivision, is subject to Section 2115, or (B) any other~~
24 ~~form of business entity, including without limitation a partnership~~
25 ~~or trust organized under the laws of this state. The exemption~~
26 ~~provided by this subdivision is not available to a “blind pool”~~
27 ~~issuer, as that term is defined by the commissioner, or to an~~
28 ~~investment company subject to the Investment Company Act of~~
29 ~~1940.~~

30 (2) ~~Sales of securities are made only to qualified purchasers or~~
31 ~~other persons the issuer reasonably believes, after reasonable~~
32 ~~inquiry, to be qualified purchasers. A corporation, partnership, or~~
33 ~~other organization specifically formed for the purpose of acquiring~~
34 ~~the securities offered by the issuer in reliance upon this exemption~~
35 ~~may be a qualified purchaser if each of the equity owners of the~~
36 ~~corporation, partnership, or other organization is a qualified~~
37 ~~purchaser. Qualified purchasers include the following:~~

38 (A) ~~A person designated in Section 260.102.13 of Title 10 of~~
39 ~~the California Code of Regulations.~~

1 ~~(B) A person designated in subdivision (i) or any rule of the~~
2 ~~commissioner adopted thereunder.~~

3 ~~(C) A pension or profit-sharing trust of the issuer, a~~
4 ~~self-employed individual retirement plan, or an individual~~
5 ~~retirement account, if the investment decisions made on behalf of~~
6 ~~the trust, plan, or account are made solely by persons who are~~
7 ~~qualified purchasers.~~

8 ~~(D) An organization described in Section 501(c)(3) of the~~
9 ~~Internal Revenue Code, corporation, Massachusetts or similar~~
10 ~~business trust, or partnership, each with total assets in excess of~~
11 ~~five million dollars (\$5,000,000) according to its most recent~~
12 ~~audited financial statements.~~

13 ~~(E) With respect to the offer and sale of one class of voting~~
14 ~~common stock of an issuer or of preferred stock of an issuer~~
15 ~~entitling the holder thereof to at least the same voting rights as the~~
16 ~~issuer's one class of voting common stock, provided that the issuer~~
17 ~~has only one class voting common stock outstanding upon~~
18 ~~consummation of the offer and sale, a natural person who, either~~
19 ~~individually or jointly with the person's spouse, (i) has a minimum~~
20 ~~net worth of two hundred fifty thousand dollars (\$250,000), and~~
21 ~~had, during the immediately preceding tax year, gross income in~~
22 ~~excess of one hundred thousand dollars (\$100,000) and reasonably~~
23 ~~expects gross income in excess of one hundred thousand dollars~~
24 ~~(\$100,000) during the current tax year or (ii) has a minimum net~~
25 ~~worth of five hundred thousand dollars (\$500,000). "Net worth"~~
26 ~~shall be determined exclusive of home, home furnishings, and~~
27 ~~automobiles. Other assets included in the computation of net worth~~
28 ~~may be valued at fair market value.~~

29 ~~Each natural person specified above, by reason of his or her~~
30 ~~business or financial experience, or the business or financial~~
31 ~~experience of his or her professional adviser, who is unaffiliated~~
32 ~~with and who is not compensated, directly or indirectly, by the~~
33 ~~issuer or any affiliate or selling agent of the issuer, can be~~
34 ~~reasonably assumed to have the capacity to protect his or her~~
35 ~~interests in connection with the transaction. The amount of the~~
36 ~~investment of each natural person shall not exceed 10 percent of~~
37 ~~the net worth, as determined by this subparagraph, of that natural~~
38 ~~person.~~

39 ~~(F) Any other purchaser designated as qualified by rule of the~~
40 ~~commissioner.~~

1 ~~(3) Each purchaser represents that the purchaser is purchasing~~
2 ~~for the purchaser's own account (or trust account, if the purchaser~~
3 ~~is a trustee) and not with a view to or for sale in connection with~~
4 ~~a distribution of the security.~~

5 ~~(4) Each natural person purchaser, including a corporation,~~
6 ~~partnership, or other organization specifically formed by natural~~
7 ~~persons for the purpose of acquiring the securities offered by the~~
8 ~~issuer, receives, at least five business days before securities are~~
9 ~~sold to, or a commitment to purchase is accepted from, the~~
10 ~~purchaser, a written offering disclosure statement that shall meet~~
11 ~~the disclosure requirements of Regulation D (17 C.F.R. 230.501~~
12 ~~et seq.), and any other information as may be prescribed by rule~~
13 ~~of the commissioner, provided that the issuer shall not be obligated~~
14 ~~pursuant to this paragraph to provide this disclosure statement to~~
15 ~~a natural person qualified under Section 260.102.13 of Title 10 of~~
16 ~~the California Code of Regulations. The offer or sale of securities~~
17 ~~pursuant to a disclosure statement required by this paragraph that~~
18 ~~is in violation of Section 25401, or that fails to meet the disclosure~~
19 ~~requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall~~
20 ~~not render unavailable to the issuer the claim of an exemption from~~
21 ~~Section 25110 afforded by this subdivision. This paragraph does~~
22 ~~not impose, directly or indirectly, any additional disclosure~~
23 ~~obligation with respect to any other exemption from qualification~~
24 ~~available under any other provision of this section.~~

25 ~~(5) (A) A general announcement of proposed offering may be~~
26 ~~published by written document only, provided that the general~~
27 ~~announcement of proposed offering sets forth the following~~
28 ~~required information:~~

- 29 ~~(i) The name of the issuer of the securities.~~
30 ~~(ii) The full title of the security to be issued.~~
31 ~~(iii) The anticipated suitability standards for prospective~~
32 ~~purchasers.~~
33 ~~(iv) A statement that (I) no money or other consideration is~~
34 ~~being solicited or will be accepted, (II) an indication of interest~~
35 ~~made by a prospective purchaser involves no obligation or~~
36 ~~commitment of any kind, and, if the issuer is required by paragraph~~
37 ~~(4) to deliver a disclosure statement to prospective purchasers,~~
38 ~~(III) no sales will be made or commitment to purchase accepted~~
39 ~~until five business days after delivery of a disclosure statement~~

1 and subscription information to the prospective purchaser in
2 accordance with the requirements of this subdivision.

3 (v) Any other information required by rule of the commissioner.

4 (vi) The following legend: "For more complete information
5 about (Name of Issuer) and (Full Title of Security), send for
6 additional information from (Name and Address) by sending this
7 coupon or calling (Telephone Number)."

8 (B) The general announcement of proposed offering referred
9 to in subparagraph (A) may also set forth the following
10 information:

11 (i) A brief description of the business of the issuer.

12 (ii) The geographic location of the issuer and its business.

13 (iii) The price of the security to be issued, or, if the price is not
14 known, the method of its determination or the probable price range
15 as specified by the issuer, and the aggregate offering price.

16 (C) The general announcement of proposed offering shall
17 contain only the information that is set forth in this paragraph.

18 (D) Dissemination of the general announcement of proposed
19 offering to persons who are not qualified purchasers, without more,
20 shall not disqualify the issuer from claiming the exemption under
21 this subdivision.

22 (6) No telephone solicitation shall be permitted until the issuer
23 has determined that the prospective purchaser to be solicited is a
24 qualified purchaser.

25 (7) The issuer files a notice of transaction under this subdivision
26 both (A) concurrent with the publication of a general announcement
27 of proposed offering or at the time of the initial offer of the
28 securities, whichever occurs first, accompanied by a filing fee, and
29 (B) within 10 business days following the close or abandonment
30 of the offering, but in no case more than 210 days from the date
31 of filing the first notice. The first notice of transaction under
32 subparagraph (A) shall contain an undertaking, in a form acceptable
33 to the commissioner, to deliver any disclosure statement required
34 by paragraph (4) to be delivered to prospective purchasers, and
35 any supplement thereto, to the commissioner within 10 days of
36 the commissioner's request for the information. The exemption
37 from qualification afforded by this subdivision is unavailable if
38 an issuer fails to file the first notice required under subparagraph
39 (A) or to pay the filing fee. The commissioner has the authority
40 to assess an administrative penalty of up to one thousand dollars

1 ~~(\$1,000) against an issuer that fails to deliver the disclosure~~
2 ~~statement required to be delivered to the commissioner upon the~~
3 ~~commissioner's request within the time period set forth above.~~
4 ~~Neither the filing of the disclosure statement nor the failure by the~~
5 ~~commissioner to comment thereon precludes the commissioner~~
6 ~~from taking any action deemed necessary or appropriate under this~~
7 ~~division with respect to the offer and sale of the securities.~~

8 ~~(o) An offer or sale of any security issued by a corporation or~~
9 ~~limited liability company pursuant to a purchase plan or agreement,~~
10 ~~or issued pursuant to an option plan or agreement, where the~~
11 ~~security at the time of issuance or grant is exempt from registration~~
12 ~~under the Securities Act of 1933, as amended, pursuant to Rule~~
13 ~~701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions~~
14 ~~of which are hereby incorporated by reference into this section,~~
15 ~~provided that (1) the terms of any purchase plan or agreement shall~~
16 ~~comply with Sections 260.140.42, 260.140.45, and 260.140.46 of~~
17 ~~Title 10 of the California Code of Regulations, (2) the terms of~~
18 ~~any option plan or agreement shall comply with Sections~~
19 ~~260.140.41, 260.140.45, and 260.140.46 of Title 10 of the~~
20 ~~California Code of Regulations, and (3) the issuer files a notice of~~
21 ~~transaction in accordance with rules adopted by the commissioner~~
22 ~~no later than 30 days after the initial issuance of any security under~~
23 ~~that plan, accompanied by a filing fee as prescribed by subdivision~~
24 ~~(y) of Section 25608. The failure to file the notice of transaction~~
25 ~~within the time specified in this subdivision shall not affect the~~
26 ~~availability of this exemption. An issuer that fails to file the notice~~
27 ~~shall, within 15 business days after discovery of the failure to file~~
28 ~~the notice or after demand by the commissioner, whichever occurs~~
29 ~~first, file the notice and pay the commissioner a fee equal to the~~
30 ~~maximum aggregate fee payable had the transaction been qualified~~
31 ~~under Section 25110.~~

32 ~~Offers and sales exempt pursuant to this subdivision shall be~~
33 ~~deemed to be part of a single, discrete offering and are not subject~~
34 ~~to integration with any other offering or sale, whether qualified~~
35 ~~under Chapter 2 (commencing with Section 25110), or otherwise~~
36 ~~exempt, or not subject to qualification.~~

37 ~~(p) An offer or sale of nonredeemable securities to accredited~~
38 ~~investors (Section 28031) by a person licensed under the Capital~~
39 ~~Access Company Law (Division 3 (commencing with Section~~
40 ~~28000) of Title 4), provided that all purchasers either (1) have a~~

1 ~~preexisting personal or business relationship with the offeror or~~
2 ~~any of its partners, officers, directors, controlling persons, or~~
3 ~~managers (as appointed or elected by the members), or (2) by~~
4 ~~reason of their business or financial experience or the business or~~
5 ~~financial experience of their professional advisers who are~~
6 ~~unaffiliated with and who are not compensated by the issuer or~~
7 ~~any affiliate or selling agent of the issuer, directly or indirectly,~~
8 ~~could be reasonably assumed to have the capacity to protect their~~
9 ~~own interests in connection with the transaction. All nonredeemable~~
10 ~~securities shall be evidenced by certificates that shall have stamped~~
11 ~~or printed prominently on their face a legend in a form to be~~
12 ~~prescribed by rule or order of the commissioner restricting transfer~~
13 ~~of the securities in the manner as the rule or order provides. The~~
14 ~~exemption under this subdivision shall not be available for any~~
15 ~~offering that is exempt or asserted to be exempt pursuant to Section~~
16 ~~3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77e(a)(11))~~
17 ~~or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is~~
18 ~~conducted by means of any form of general solicitation or general~~
19 ~~advertising.~~

20 ~~(q) Any offer or sale of any viatical or life settlement contract~~
21 ~~or fractionalized or pooled interest therein in a transaction that~~
22 ~~meets all of the following criteria:~~

23 ~~(1) Sales of securities described in this subdivision are made~~
24 ~~only to qualified purchasers or other persons the issuer reasonably~~
25 ~~believes, after reasonable inquiry, to be qualified purchasers. A~~
26 ~~corporation, partnership, or other organization specifically formed~~
27 ~~for the purpose of acquiring the securities offered by the issuer in~~
28 ~~reliance upon this exemption may be a qualified purchaser only if~~
29 ~~each of the equity owners of the corporation, partnership, or other~~
30 ~~organization is a qualified purchaser. Qualified purchasers include~~
31 ~~the following:~~

32 ~~(A) A person designated in Section 260.102.13 of Title 10 of~~
33 ~~the California Code of Regulations.~~

34 ~~(B) A person designated in subdivision (i) or any rule of the~~
35 ~~commissioner adopted thereunder.~~

36 ~~(C) A pension or profit-sharing trust of the issuer, a~~
37 ~~self-employed individual retirement plan, or an individual~~
38 ~~retirement account, if the investment decisions made on behalf of~~
39 ~~the trust, plan, or account are made solely by persons who are~~
40 ~~qualified purchasers.~~

~~(D) An organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, each with total assets in excess of five million dollars (\$5,000,000) according to its most recent audited financial statements.~~

~~(E) A natural person who, either individually or jointly with the person's spouse, (i) has a minimum net worth of one hundred fifty thousand dollars (\$150,000) and had, during the immediately preceding tax year, gross income in excess of one hundred thousand dollars (\$100,000) and reasonably expects gross income in excess of one hundred thousand dollars (\$100,000) during the current tax year or (ii) has a minimum net worth of two hundred fifty thousand dollars (\$250,000). "Net worth" shall be determined exclusive of home, home furnishings, and automobiles. Other assets included in the computation of net worth may be valued at fair market value.~~

~~Each natural person specified above, by reason of his or her business or financial experience, or the business or financial experience of his or her professional adviser, who is unaffiliated with and who is not compensated, directly or indirectly, by the issuer or any affiliate or selling agent of the issuer, can be reasonably assumed to have the capacity to protect his or her interests in connection with the transaction.~~

~~The amount of the investment of each natural person shall not exceed 10 percent of the net worth, as determined by this subdivision, of that natural person.~~

~~(F) Any other purchaser designated as qualified by rule of the commissioner.~~

~~(2) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or trust account, if the purchaser is a trustee) and not with a view to or for sale in connection with a distribution of the security.~~

~~(3) Each natural person purchaser, including a corporation, partnership, or other organization specifically formed by natural persons for the purpose of acquiring the securities offered by the issuer, receives, at least five business days before securities described in this subdivision are sold to, or a commitment to purchase is accepted from, the purchaser, the following information in writing:~~

~~(A) The name, principal business and mailing address, and telephone number of the issuer.~~

1 ~~(B) The suitability standards for prospective purchasers as set~~
2 ~~forth in paragraph (1) of this subdivision.~~

3 ~~(C) A description of the issuer's type of business organization~~
4 ~~and the state in which the issuer is organized or incorporated.~~

5 ~~(D) A brief description of the business of the issuer.~~

6 ~~(E) If the issuer retains ownership or becomes the beneficiary~~
7 ~~of the insurance policy, an audit report of an independent certified~~
8 ~~public accountant together with a balance sheet and related~~
9 ~~statements of income, retained earnings, and cashflows that reflect~~
10 ~~the issuer's financial position, the results of the issuer's operations,~~
11 ~~and the issuer's cashflows as of a date within 15 months before~~
12 ~~the date of the initial issuance of the securities described in this~~
13 ~~subdivision. The financial statements listed in this subparagraph~~
14 ~~shall be prepared in conformity with generally accepted accounting~~
15 ~~principles. If the date of the audit report is more than 120 days~~
16 ~~before the date of the initial issuance of the securities described~~
17 ~~in this subdivision, the issuer shall provide unaudited interim~~
18 ~~financial statements.~~

19 ~~(F) The names of all directors, officers, partners, members, or~~
20 ~~trustees of the issuer.~~

21 ~~(G) A description of any order, judgment, or decree that is final~~
22 ~~as to the issuing entity of any state, federal, or foreign country~~
23 ~~governmental agency or administrator, or of any state, federal, or~~
24 ~~foreign country court of competent jurisdiction (i) revoking,~~
25 ~~suspending, denying, or censuring for cause any license, permit,~~
26 ~~or other authority of the issuer or of any director, officer, partner,~~
27 ~~member, trustee, or person owning or controlling, directly or~~
28 ~~indirectly, 10 percent or more of the outstanding interest or equity~~
29 ~~securities of the issuer, to engage in the securities, commodities,~~
30 ~~franchise, insurance, real estate, or lending business or in the offer~~
31 ~~or sale of securities, commodities, franchises, insurance, real estate,~~
32 ~~or loans; (ii) permanently restraining, enjoining, barring,~~
33 ~~suspending, or censuring any such person from engaging in or~~
34 ~~continuing any conduct, practice, or employment in connection~~
35 ~~with the offer or sale of securities, commodities, franchises,~~
36 ~~insurance, real estate, or loans; (iii) convicting any such person~~
37 ~~of, or pleading nolo contendere by any such person to, any felony~~
38 ~~or misdemeanor involving a security, commodity, franchise,~~
39 ~~insurance, real estate, or loan, or any aspect of the securities,~~
40 ~~commodities, franchise, insurance, real estate, or lending business,~~

1 or involving dishonesty, fraud, deceit, embezzlement, fraudulent
2 conversion, or misappropriation of property; or (iv) holding any
3 such person liable in a civil action involving breach of a fiduciary
4 duty, fraud, deceit, embezzlement, fraudulent conversion, or
5 misappropriation of property. This subparagraph does not apply
6 to any order, judgment, or decree that has been vacated, overturned,
7 or is more than 10 years old.

8 (H) Notice of the purchaser's right to rescind or cancel the
9 investment and receive a refund pursuant to Section 25508.5.

10 (I) The name, address, and telephone number of the issuing
11 insurance company, and the name, address, and telephone number
12 of the state or foreign country regulator of the insurance company.

13 (J) The total face value of the insurance policy and the
14 percentage of the insurance policy the purchaser will own.

15 (K) The insurance policy number, issue date, and type.

16 (L) If a group insurance policy, the name, address, and telephone
17 number of the group, and, if applicable, the material terms and
18 conditions of converting the policy to an individual policy,
19 including the amount of increased premiums.

20 (M) If a term insurance policy, the term and the name, address,
21 and telephone number of the person who will be responsible for
22 renewing the policy if necessary.

23 (N) That the insurance policy is beyond the state statute for
24 contestability and the reason therefor.

25 (O) The insurance policy premiums and terms of premium
26 payments.

27 (P) The amount of the purchaser's moneys that will be set aside
28 to pay premiums.

29 (Q) The name, address, and telephone number of the person
30 who will be the insurance policy owner and the person who will
31 be responsible for paying premiums.

32 (R) The date on which the purchaser will be required to pay
33 premiums and the amount of the premium, if known.

34 (S) A statement to the effect that any projected rate of return to
35 the purchaser from the purchase of a viatical or life settlement
36 contract or a fractionalized or pooled interest therein is based on
37 an estimated life expectancy for the person insured under the life
38 insurance policy; that the return on the purchase may vary
39 substantially from the expected rate of return based upon the actual
40 life expectancy of the insured that may be less than, equal to, or

1 may greatly exceed the estimated life expectancy; and that the rate
2 of return would be higher if the actual life expectancy were less
3 than, and lower if the actual life expectancy were greater than, the
4 estimated life expectancy of the insured at the time the viatical or
5 life settlement contract was closed.

6 ~~(T) A statement that the purchaser should consult with his or~~
7 ~~her tax adviser regarding the tax consequences of the purchase of~~
8 ~~the viatical or life settlement contract or fractionalized or pooled~~
9 ~~interest therein and, if the purchaser is using retirement funds or~~
10 ~~accounts for that purchase, whether or not any adverse tax~~
11 ~~consequences might result from the use of those funds for the~~
12 ~~purchase of that investment.~~

13 ~~(U) Any other information as may be prescribed by rule of the~~
14 ~~commissioner.~~

15 ~~(r) (1) (A) Any offer or sale of a security by an issuer using~~
16 ~~any form of general solicitation or general advertising, as specified~~
17 ~~in Rule 502(c) of Regulation D under the Securities Act of 1933~~
18 ~~(17 C.F.R. 230.502(c)), except as provided in subparagraph (B).~~

19 ~~(B) Any offer or sale of a security made by means of an~~
20 ~~unsolicited telephone call to a person's residence or cellular~~
21 ~~telephone, provided that the issuer and the caller take reasonable~~
22 ~~steps, prior to the unsolicited telephone call, to verify that the~~
23 ~~person is an accredited investor, as defined in Rule 501 of~~
24 ~~Regulation D under the Securities Act of 1933 (17 C.F.R. 230.501),~~
25 ~~and the transaction meets all the requirements of this subdivision.~~

26 ~~(2) In order for the exemption under this subdivision to apply,~~
27 ~~all of the following shall be satisfied:~~

28 ~~(A) The aggregate offering price for an offering of securities~~
29 ~~under this subdivision, as defined in Rule 501(c) of Regulation D~~
30 ~~under the Securities Act of 1933 (17 C.F.R. 230.501(c)), shall not~~
31 ~~exceed one million dollars (\$1,000,000), less the aggregate offering~~
32 ~~price for all securities sold within 12 months before the start of~~
33 ~~and during the offering of securities pursuant to the exemption~~
34 ~~under this subdivision.~~

35 ~~(B) Prior to selling any security to a person solicited pursuant~~
36 ~~to this subdivision, an issuer shall obtain from that person a~~
37 ~~completed offeree questionnaire in a form adopted by the~~
38 ~~commissioner.~~

39 ~~(C) The issuer shall maintain the confidentiality of any and all~~
40 ~~information in the questionnaire and not otherwise sell, distribute,~~

1 or use the information in that questionnaire for any purpose other
2 than to assist in establishing the suitability of that investor for that
3 particular offering. A violation of this subparagraph shall result in
4 disqualification of the offering and from the future use of this
5 exemption under this subdivision by the issuer.

6 ~~(D) The issuer shall take reasonable steps to verify that,~~
7 ~~immediately prior to the sale, the offering is suitable for the person,~~
8 ~~based on the person's financial status, objectives, investment~~
9 ~~experience, time horizon, risk tolerance, and any other information~~
10 ~~the issuer deems relevant to determine whether the offering is~~
11 ~~suitable to the person. The issuer shall maintain, for a period of~~
12 ~~four years, documentation sufficient to establish the basis for its~~
13 ~~determination of suitability.~~

14 ~~(E) For purposes of this paragraph, an issuer may reasonably~~
15 ~~assume that the person has the capacity to protect his or her~~
16 ~~interests in connection with the offering due to his or her business~~
17 ~~or financial experience, or the business or financial experience of~~
18 ~~his or her professional adviser, who is unaffiliated with and not~~
19 ~~compensated, directly or indirectly, by the issuer or any affiliate~~
20 ~~or selling agent of the issuer.~~

21 ~~(F) (i) The issuer shall make available to potential investors a~~
22 ~~Small Corporate Offering Registration disclosure document based~~
23 ~~on the Form U-7 as adopted by the North American Securities~~
24 ~~Administrators Association prior to the commencement of the~~
25 ~~offering of securities.~~

26 ~~(ii) The Form U-7 shall include financial statements of the~~
27 ~~issuer prepared in accordance with generally accepted accounting~~
28 ~~principles. If the issuer has not conducted significant operations,~~
29 ~~statements of receipts, and disbursements shall be included in place~~
30 ~~of statements of income. Interim financial statements may be~~
31 ~~unaudited. All other financial statements shall be audited by~~
32 ~~independent certified public accountants. However, if each of the~~
33 ~~following four conditions are met, the financial statements in place~~
34 ~~of being audited may be reviewed by independent certified public~~
35 ~~accountants in accordance with the Accounting and Review Service~~
36 ~~Standards promulgated by the American Institute of Certified~~
37 ~~Public Accountants.~~

38 ~~(I) The issuer shall not have previously sold securities in an~~
39 ~~offering involving the general solicitation of prospective investors~~
40 ~~using advertising, mass mailings, public meetings, "cold call"~~

1 ~~telephone solicitation or any other method directed toward the~~
2 ~~public.~~

3 ~~(II) The issuer has not been previously required under federal~~
4 ~~or state securities laws to provide audited financial statements in~~
5 ~~connection with any sale of its securities.~~

6 ~~(III) The aggregate amount of all previous sales of securities~~
7 ~~by the issuer, exclusive of any debt financing with banks and~~
8 ~~similar commercial lenders, shall not exceed one million dollars~~
9 ~~(\$1,000,000).~~

10 ~~(IV) The amount of the present offering does not exceed one~~
11 ~~million dollars (\$1,000,000).~~

12 ~~(G) (i) The aggregate amount of securities sold to all investors~~
13 ~~by the issuer in reliance on this subdivision during the 12-month~~
14 ~~period preceding the date of the offer or sale, including the~~
15 ~~securities offered in the transaction, shall not exceed one million~~
16 ~~dollars (\$1,000,000).~~

17 ~~(ii) The aggregate amount of securities sold to any investor by~~
18 ~~any issuer in reliance on this subdivision during the 12-month~~
19 ~~period preceding the date of the transaction, including the securities~~
20 ~~sold to the investor in that transaction, shall not exceed the greater~~
21 ~~of the following:~~

22 ~~(I) Two thousand dollars (\$2,000) or 5 percent of annual income~~
23 ~~or net worth of the investor, whichever is greater, if both the annual~~
24 ~~income and net worth are less than one hundred thousand dollars~~
25 ~~(\$100,000).~~

26 ~~(II) Ten percent of annual income or of net worth of the investor,~~
27 ~~whichever is greater, not to exceed an amount sold of one hundred~~
28 ~~thousand dollars (\$100,000), if either the annual income or net~~
29 ~~worth of the investor is equal to or more than one hundred thousand~~
30 ~~dollars (\$100,000). To determine the investment limit for a natural~~
31 ~~person, the person's annual income and net worth shall be~~
32 ~~calculated as those values are calculated for purposes of~~
33 ~~determining accredited investor status in accordance with Rule~~
34 ~~501 of Regulation D under the Securities Act of 1933 (17 C.F.R.~~
35 ~~501). The person's annual income and net worth may be calculated~~
36 ~~jointly with the annual income and net worth of the person's~~
37 ~~spouse. "Net worth" shall be determined as specified in Rule 501(a)~~
38 ~~of Regulation D under the Securities Act of 1933, (17 C.F.R.~~
39 ~~230.501(a)).~~

~~(H) The issuer believes in good faith that the offer and sale are exempt from registration under Section 5 of the Securities Act of 1933 (15 U.S.C. Sec. 77e) pursuant to Section 3(a)(11) of that act (15 U.S.C. Sec. 77e(a)(11)), or the rules and regulations adopted by the Securities and Exchange Commission under Section 3(b) or Section 4(2) of that act (15 U.S.C. Sec. 77d(2)).~~

~~(I) The issuer specifies in all advertisements, communications, sales literature, or other information that is publicly disseminated in connection with the offering, including by means of electronic transmission or broadcast media, that the offering is exempt from the qualification requirements of Section 25110 under the exemption provided for in this subdivision.~~

~~(J) An issuer shall maintain a copy of any advertisement or solicitation, and any other offering material, for four years.~~

~~(3) The commissioner may by rule require the issuer to file a notice of transactions under this subdivision. The failure to file the notice or the failure to file the notice within the time specified by the rule of the commissioner shall not affect the availability of the exemption. An issuer who has failed to file the notice as provided by rule of the commissioner, within 15 business days after discovery of the failure to file the notice, or after demand by the commissioner, whichever occurs first, shall file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110.~~

~~(4) (A) A person who purchases securities in an offering that fails to meet all of the terms and conditions of this subdivision may bring an action under Sections 25503, 25504, and 25504.1 for rescission of the purchase and any other remedy provided in those sections.~~

~~(B) The court shall award attorney's fees and costs to a prevailing purchaser in an action brought pursuant to this paragraph, and may award treble or punitive damages.~~

~~(5) The exemption under this subdivision shall not be available for an offering by an issuer that is either an investment company, as defined in Section 3(a)(1) of the Investment Company Act of 1940 (15 U.S.C. Sec. 80a et seq.), or a development stage company, as referred to in Rule 504(a)(3) of Regulation D under the Securities Act of 1933 (17 C.F.R. 504(a)(3)).~~

~~(6) The exemption under this subdivision shall not be available to an issuer if the issuer, a predecessor of the issuer, an affiliated~~

1 issuer; a director, officer, general partner, or managing member
2 of the issuer; a beneficial owner of 20 percent or more of the
3 issuer's outstanding voting equity securities, calculated on the
4 basis of voting power; a promoter connected with the issuer in any
5 capacity at the time of the sale; a person that has been or will be
6 paid, directly or indirectly, remuneration for solicitation of
7 purchasers in connection with the sale of securities, or a general
8 partner, director, officer, or managing member of that solicitor;
9 meets any of the following criteria:

10 (A) Has been convicted, within 10 years before the filing of the
11 information required by Section 4A(b) of the Securities Act (15
12 U.S.C. Sec. 77d-1(b)), or five years, in the case of issuers, their
13 predecessors and affiliated issuers, of a felony or misdemeanor
14 that satisfies any of the following conditions:

15 (i) The felony or misdemeanor is in connection with the purchase
16 or sale of any security.

17 (ii) The felony or misdemeanor involves the making of any false
18 filing with the commission.

19 (iii) The felony or misdemeanor arises out of the conduct of the
20 business of an underwriter, broker, dealer, municipal securities
21 dealer, investment adviser, or paid solicitor of purchasers of
22 securities.

23 (B) Is subject to any order, judgment, or decree of any court of
24 competent jurisdiction, entered within five years before the filing
25 of the information required by Section 4A(b) of the Securities Act
26 (15 U.S.C. Sec. 77d-1(b)) that, at the time of the filing, restrains
27 or enjoins the person from engaging or continuing to engage in a
28 conduct or practice that satisfies any of the following conditions:

29 (i) The conduct is in connection with the purchase or sale of
30 any security.

31 (ii) The conduct involves the making of any false filing with
32 the Securities and Exchange Commission.

33 (iii) The conduct arises out of the conduct of the business of an
34 underwriter, broker, dealer, municipal securities dealer, investment
35 adviser, or paid solicitor of purchasers of securities.

36 (C) Is subject to a final order of a state securities commission,
37 or an agency or officer of a state performing like functions; a state
38 authority that supervises or examines banks, savings associations,
39 or credit unions; a state insurance commission, or an agency or
40 officer of a state performing like functions; an appropriate federal

~~banking agency, the United States Commodity Futures Trading Commission, or the National Credit Union Administration that does either of the following:~~

~~(i) At the time of the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. Sec. 77d-1(b)), bars the person from any of the following activities:~~

~~(I) Associating with an entity regulated by the commission, authority, agency, or officer.~~

~~(II) Engaging in the business of securities, insurance, or banking.~~

~~(III) Engaging in savings association or credit union activities.~~

~~(ii) (I) Constitutes a final order based on a violation of a law or regulation that prohibits fraudulent, manipulative, or deceptive conduct and for which the order was entered within the 10-year period ending on the date of the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. Sec. 77d-1(b)).~~

~~(II) For purposes of this clause, “final order” means a written directive or declaratory statement issued by a federal or state agency, described in proposed Section 227.503(a)(3) of Title 17 of the Code of Federal Regulations, under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.~~

~~(D) Is subject to an order of the Securities and Exchange Commission entered pursuant to Section 15(b) or 15B(e) of the Exchange Act (15 U.S.C. Sec. 78o(b) or 78o-4(e)) or Section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-3(e) or (f)) that, at the time of the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. Sec. 77d-1(b)), satisfies any of the following conditions:~~

~~(i) The order suspends or revokes the person’s registration as a broker, dealer, municipal securities dealer, or investment adviser.~~

~~(ii) The order places limitations on the activities, functions, or operations of the person.~~

~~(iii) The order bars the person from being associated with any entity or from participating in the offering of any penny stock.~~

~~(E) Is subject to any order of the Securities Exchange Commission entered within five years before the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. Sec. 77d-1(b)) that, at the time of the filing, orders the~~

1 person to cease and desist from committing or causing a violation
2 or future violation of either of the following:

3 (i) Any scienter-based antifraud provision of the federal
4 securities laws, including without limitation Section 17(a)(1) of
5 the Securities Act (15 U.S.C. Sec. 77q(a)(1)), Section 10(b) of the
6 Exchange Act (15 U.S.C. Sec. 78j(b)) and 17 C.F.R. 240.10b-5,
7 Section 15(c)(1) of the Exchange Act (15 U.S.C. Sec. 78o(c)(1))
8 and Section 206(1) of the Investment Advisers Act of 1940 (15
9 U.S.C. Sec. 80b-6(1)) or any other rule or regulation thereunder.

10 (ii) Section 5 of the federal Securities Act (15 U.S.C. Sec. 77e).

11 (F) Is suspended or expelled from membership in, or suspended
12 or barred from association with a member of, a registered national
13 securities exchange or a registered national or affiliated securities
14 association for any act or omission constituting conduct
15 inconsistent with just and equitable principles of trade.

16 (G) Has filed, as a registrant or issuer, or was named as an
17 underwriter in, any registration statement or Regulation A (17
18 C.F.R. 230.251 et seq.) offering statement filed with the
19 commission that, within five years before the filing of the
20 information required by Section 4A(b) of the Securities Act (15
21 U.S.C. Sec. 77d-1(b)), was the subject of a refusal order, stop
22 order, or order suspending the Regulation A exemption, or is, at
23 the time of that filing, the subject of an investigation or proceeding
24 to determine whether a stop order or suspension order should be
25 issued.

26 (H) Is subject to a United States Postal Service false
27 representation order entered within five years before the filing of
28 the information required by Section 4A(b) of the Securities Act
29 (15 U.S.C. Sec. 77d-1(b)), or, at the time of the filing, is subject
30 to a temporary restraining order or preliminary injunction with
31 respect to conduct alleged by the United States Postal Service to
32 constitute a scheme or device for obtaining money or property
33 through the mail by means of false representations.

34 (7) Subparagraph (A) of paragraph (6) shall not apply in any of
35 the following circumstances:

36 (A) With respect to any conviction, order, judgment, decree,
37 suspension, expulsion, or bar that occurred or was issued before
38 the effective date of the final rule.

39 (B) Upon a showing of good cause and without prejudice to any
40 other action by the Securities and Exchange commission, if the

1 Securities and Exchange commission determines that it is not
2 necessary under the circumstances that an exemption be denied.

3 (C) If, before the filing of the information required by Section
4 4A(b) of the Securities Act (15 U.S.C. Sec. 77d-1(b)), the court
5 or regulatory authority that entered the relevant order, judgment,
6 or decree advises in writing, whether contained in the relevant
7 judgment, order, or decree or separately to the Securities and
8 Exchange Commission or its staff, that disqualification under
9 subparagraph (A) of paragraph (6) should not arise as a
10 consequence of the order, judgment, or decree.

11 (D) If the issuer establishes that it did not know and, in the
12 exercise of reasonable care, could not have known that a
13 disqualification existed under subparagraph (A) of paragraph (6):
14 An issuer shall not be able to establish that it has exercised
15 reasonable care unless it has made factual inquiry into whether
16 any disqualification exists. The nature and scope of the factual
17 inquiry will vary based on the facts and circumstances concerning,
18 among other things, the issuer and the other offering participants.

19 (8) For purposes of subparagraph (A) of paragraph (6), events
20 relating to any affiliated issuer that occurred before the affiliation
21 arose will not be considered disqualifying if the affiliated entity
22 is neither in control of the issuer, nor under common control with
23 the issuer by a third party that was in control of the affiliated entity
24 at the time of those events.